

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	Criminal Action No. 05-16-GMS
)	
FRANCIS R. MITCHELL,)	
)	
Defendant.)	

MOTION TO SUPPRESS EVIDENCE

Defendant, Francis R. Mitchell, by and through his counsel, Christopher S. Koyste, hereby moves the Court, pursuant to Fed. R. Crim. P. 12(b) and the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, to suppress any and all evidence obtained as a result of the statements made by Mr. Mitchell.

In support of this motion Mr. Mitchell submits the following:

I. FACTUAL SUMMARY

1. Francis R. Mitchell was the former owner and operator of Bob's Adult Book Store, located on the North Dupont Highway in New Castle Delaware. A cooperating informant provided information that was used to obtain a search warrant. In November of 1999, Mr. Mitchell's business and residence in Delaware were searched by agents of the Delaware State Police financial crime unit, yielding documents that the Governments believe support a finding of income tax fraud.

2. Mr. Mitchell sold the business in 2000 and continued to operate the same. In September of 2001 he left the business and retired. Mr. Mitchell relocated to Las Vegas, Nevada and was unexpectedly visited by three IRS Special Agents on December 23, 2002. The alleged purpose of

the visit was to serve grand jury subpoenas on Mr. Mitchell and his wife, yet it was three IRS Agents from Delaware who served the subpoenas, rather than United States Marshals or other agents based out of the state of Nevada.

3. Special Agent E. Mark Fulton was the agent in charge of the investigation and the December 23, 2002, interview of Mr. Mitchell and wrote a detailed memorandum of the same. Agent Fulton claims that Mr. Mitchell was read a non-custodial Miranda rights card. Agent Fulton claims that Mr. Mitchell indicated that he didn't want to seek legal representation, and that Mr. Mitchell stated that he understood his Miranda rights. There was no written Miranda rights form obtained by Agent Fulton.

4. During the December 23, 2002 interview Mr. Mitchell made numerous incriminating statements that will be used by the Government in their case-in-chief.

II. MOTION TO SUPPRESS STATEMENTS AND ANY EVIDENCE DERIVED FROM THOSE STATEMENTS.

5. The Defense challenges the admissibility of any statements Mr. Mitchell may have made. The United States bears the burden of proof to establish by a preponderance of the evidence whether Mr. Mitchell made a knowing, voluntary and an intelligent waiver of his Miranda rights. This Court must make this determination considering the "totality of the circumstances." Oregon v. Bradshaw, 462 U.S. 1038, 1046 (1983)(quoting Edwards v. Arizona, 451 U.S. 476, 486 n. 9 (1981)).

6. Mr. Mitchell advances that he was interrogated by Agent Hughes in violation of Miranda v. Arizona, 384 U.S. 436 (1966), and the Fifth and Sixth Amendments to the United States Constitution. Mr. Mitchell asserts that the statements were obtained in violation of Miranda in that they were not the result of a knowing, intelligent and a voluntary waiver of his right to remain silent

and his right to counsel. See Edwards v. Arizona, 451 U.S. 477, 485 (1981); Michigan v. Mosley, 423 U.S. 96, 100-101 (1975); Miranda, 384 U.S., at 473-474. Furthermore, Mr. Mitchell objects to any evidence that was later obtained based on the fruit of the poisonous tree doctrine. Wong Sun v. United States, 371 U.S. at 487-488.

Wherefore, Mr. Mitchell respectfully requests an evidentiary hearing on this motion and an opportunity to support this motion by letter memoranda or briefing after the hearing. Thereafter, Mr. Mitchell requests this Court to issue an order suppressing the noted evidence.

/s/ Christopher S. Koyste
Christopher S. Koyste, Esquire
Assistant Federal Public Defender
704 King Street, Suite 110
Wilmington, Delaware 19801
Attorney for Defendant Mitchell

DATED: June 23, 2006

CERTIFICATE OF SERVICE

Undersigned counsel certifies that a copy of Defendant's Motion to Suppress Evidence is available for public viewing and downloading and was electronically delivered on June 23, 2006 to:

Richard G. Andrews, Esquire
Assistant United States Attorney
1007 Orange Street, Suite 700
Wilmington, DE 19801

/s/ Christopher S. Koyste
Christopher S. Koyste, Esquire
Assistant Federal Public Defender
704 King Street, Suite 110
Wilmington, Delaware 19801
Email: ecf_ck@msn.com
Attorney for Defendant Mitchell